

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Forestburg Independent School District	)	File No. SLD-263274
Forestburg, Texas	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: May 10, 2002**

**Released: May 13, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Forestburg Independent School District (Forestburg), Forestburg, Texas.<sup>1</sup> Forestburg seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) to reject Forestburg’s appeal on the grounds that it was untimely filed.<sup>2</sup> For the reasons set forth below, we deny Forestburg’s Request for Review.

2. SLD issued a Block 5 Funding Request Rejection Letter for Funding Year 4 on July 16, 2001, notifying Forestburg that one or more of its Services Ordered and Certification Form 471, Block 5 Funding Requests did not meet minimum processing standards or did not comply with program rules.<sup>3</sup> Specifically, SLD rejected Forestburg’s request for discounts for Internet access.<sup>4</sup> On July 19, 2001, Forestburg filed an appeal of SLD’s decision to reject its

<sup>1</sup> Letter from Nancy Cook, Forest Independent School District, to Federal Communications Commission, filed January 11, 2002 (Request for Review).

<sup>2</sup> See *Request for Review*. Section 54.719(c) of the Commission’s rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719 (c).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy Cook, Forest Independent School District, dated July 16, 2001 (Block 5 Rejection Letter).

<sup>4</sup> *Id.*

funding for year 4 and stated that the Form 470 application number was inadvertently left out of block 5, item 12.<sup>5</sup> On September 28, 2001, SLD issued an Administrator's Decision on Appeal indicating that it would not consider Forestburg's appeal because it was received more than 30 days after the July 16, 2001 Block 5 Rejection Letter was issued.<sup>6</sup> Forestburg subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001, under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>7</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>8</sup> The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>9</sup> Because Forestburg failed to file an appeal of the July 16, 2001 Block 5 Rejection Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Forestburg's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Forestburg is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.<sup>10</sup> The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.<sup>11</sup> Forestburg has not shown good cause for the untimely filing of its initial appeal. Forestburg explains that upon receipt of the July 16, 2001 Block 5 Rejection Letter, it promptly responded by letter on July 19, 2001. Forestburg asserts that its July 19, 2001 letter was sent to the Schools and Libraries Division in Lawrence, Kansas by mistake along with the corrected Form 470.

5. We conclude that Forestburg has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to

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<sup>5</sup> Letter from Nancy Cook, Forestburg Independent School District, to Schools and Libraries Division, Universal Service Administrative Company, filed July 19, 2001 (Request for Administrator Review).

<sup>6</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nancy Cook, Forestburg Independent School District, dated September 28, 2001 (Administrator's Decision on Appeal).

<sup>7</sup> 47 C.F.R. § 54.720(b).

<sup>8</sup> 47 C.F.R. § 1.7.

<sup>9</sup> We note that, due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. *See Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002). Because the July 16, 2001 Block 5 Rejection Letter was issued before August 13, 2001, the extended appeal period does not apply to Forestburg.

<sup>10</sup> *See* 47 C.F.R. § 54.720(b).

<sup>11</sup> *See* 47 C.F.R. § 1.3.

the general rule.<sup>12</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. Specifically, the applicant bears the burden of submitting its appeal to the correct address for SLD within the established deadline if the applicant wishes its appeal to be considered on the merits. The July 16, 2001 Block 5 Rejection Letter clearly states that the appeal must be sent to “Letter of Appeal, Schools and Libraries Division, Box 125 – Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981.”<sup>13</sup> In the past, the Commission has held that a document is filed with the Commission upon its receipt at the location designated by the Commission. We see no reason to depart from this precedent here.<sup>14</sup>

6. Moreover, the particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the responsibility of adhering strictly to its filing deadlines.<sup>15</sup> In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its appeal to SLD if it wishes its appeal to be considered on the merits. An applicant must take responsibility for the action or inaction of those employees, consultants and other representatives to whom it gives responsibility for submitting timely appeals of SLD funding decisions on its behalf. Here, Forestburg fails to present good cause as to why it could not timely file its appeal to SLD. We therefore find no basis for waiving the appeal filing deadline.

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<sup>12</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>13</sup> Block 5 Rejection Letter, at 2.

<sup>14</sup> See *In the Matter of Applications of Goosetown Enterprises, Inc., To Operate A Land Mobile System in the 470-512 MHz Band in Beacon, New York*, File No. D076472, Order, 16 FCC Rcd 12792 (2001), see also *In the Matter of Cayuga Onondaga Board of Cooperative Educational Services Request for Reinstatement of License for Private Land Mobile Radio Station KNNN670, Auburn, New York*, FCC File No. 0000477311, Order, 17 FCC Rcd 19 (Wireless Bureau rel. December 26, 2001), para. 5.

<sup>15</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 (“In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.”).

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Request for Review filed by Forestburg Independent School District, Forestburg, Texas on January 11, 2002, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau